



Aurora Health Management, LLC

April 29, 2013

Frederick County Government  
Division of Finance  
Diane George, CPPB  
Director, Procurement & Contracting  
Winchester Hall  
12 East Church Street  
Frederick, Maryland 21701

Re: **RFP for Citizens Care & Rehabilitation Center and Montevue Assisted Living Facility.**  
**Proposal by Aurora Health Management, LLC**  
**8227 Cloverleaf Drive, Suite 309, Millersville, MD 21108**  
**Stanley H. Snow, President, (410) 729-8406.**

Dear Ms. George:

Pursuant to your letter dated April 11, 2013, please consider this the Best and Final Offer ("BAFO") of Aurora Health Management, LLC ("Aurora").

The Purchase Price for the Facility shall be Thirty Million (\$30,000,000) Dollars.

Aurora and the County shall enter into a Memorandum of Understanding for Resident Care Services (the "MOU"). Any resident of the Facility as of the Closing Date shall be permitted to continue residing in the Facility indefinitely, provided such resident's condition is medically appropriate for that setting and they continue to pay the fees in place as of the Closing Date. Further, Aurora shall accept new subsidized residents to MAF, provided the County agrees to pay the full private pay amount in place at the time of admission. The MOU fees to be paid by the County are as follows:

YEAR 1:	\$3.50 million (payable at closing)
YEAR 2:	\$3.25 million
YEAR 3:	\$2.25 million
YEAR 4:	\$1.70 million

Aurora is willing to purchase the pre-Closing Accounts Receivables at closing, based on the Accounts Receivables Aging provided to Aurora as of February 2013. The purchase price for such receivables would be paid at closing, in the amount of \$1,900,000. Alternatively, Aurora is willing to collect the Accounts Receivables for the Seller, for a fee of \$15,000 per month for the first twelve (12) months following closing. If the Seller elects to have Aurora continue collecting the Accounts Receivable after the first twelve months, Aurora would do so at a fee in the amount of \$75 per hour. Please note, this provision for Accounts Receivable is not currently included in the Redlined Purchase and Sale Agreement.

8227 Cloverleaf Drive  
Suite 309  
Millersville, MD 21108

4833 Rugby Avenue  
4<sup>th</sup> Floor  
Bethesda, MD 20814



Aurora Health Management, LLC

The Redlined Purchase and Sale Agreement includes a provision for completing the parking lot. However, in order to not hold up closing, Aurora would be willing to get three quotes to complete the parking lot, and accept a credit for the cost of completing the parking lot at closing; provided this timing does not prevent Aurora from receiving all necessary licenses and permits.

If our offer is accepted, we would anticipate the Closing Date to be the first day of the month following sixty (60) days after execution of the Purchase and Sale Agreement. We understand there will be hearings and other procedural matters with which the County must comply, and may affect the timing of Closing.

Attached please find the following:

1. Redlined Purchase and Sale Agreement; and
2. Benefits Chart and Benefits Comparison with what we intend to offer CCRC/MALF employees.

Thank you for your time and attention to this matter. Please feel free to contact me with any questions or concerns.

Best regards,

Stanley H. Snow  
President

enclosure

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8227 Cloverleaf Drive  
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4833 Rugby Avenue  
4<sup>th</sup> Floor  
Bethesda, MD 20814

**ASSET PURCHASE AGREEMENT**, made this \_\_\_\_ day of \_\_\_\_\_, 2013 (the "Agreement"), by and between **COUNTY COMMISSIONERS OF FREDERICK COUNTY** (the "County"), a body politic and corporate and a political subdivision of the State of Maryland, and \_\_\_\_\_, a \_\_\_\_\_, Aurora Holdings VII, LLC, a Maryland limited liability company (the "Purchaser"), (the County and the Purchaser sometimes referred to herein as "Parties").

**W-I-T-N-E-S-S-E-T-H:**

**WHEREAS**, the County owns and operates the Citizens Care and Rehabilitation Center, a 170-bed skilled nursing facility (the "CCRC") and the Montevue Assisted Living Facility, a 75 unit assisted living facility ("MALF" and, together with the CCRC, the "Facility"), located at 1910 and 1920 Rosemont Avenue, Frederick, Maryland 21702; and

**WHEREAS**, the County has determined that efficiency in government services is an important goal throughout the State of Maryland given the fiduciary responsibility to the taxpayers and given the state of fiscal affairs presently existing within the State and within the County; and

**WHEREAS**, the County has determined that the Facility and real property associated therewith are no longer required for governmental purposes; and to effectuate the transfer of ownership and operation of the Facility to a private operator via (a) the sale or conveyance of the Facility building, real property, and assets; and (b) the transfer of the County's license to operate the Facility; and

**WHEREAS**, pursuant to a public hearing held on \_\_\_\_\_, 2013, the County has agreed to sell and the Purchaser has agreed to purchase, and accept the transfer of, the Facility Assets, pursuant to the terms of this Agreement; and

**WHEREAS**, the County, and the Purchaser desire to enter into this Agreement to establish the terms and conditions under which the Purchaser will acquire the Facility Business Assets and the Facility Real Property and the terms and conditions under which the County will transfer the CCRC License, the MALF License, the Facility Real Property and the Facility Business Assets to the Purchaser.

**NOW, THEREFORE**, in consideration of the mutual premises and obligations set forth herein, the Parties hereto, intending to be legally bound hereby, agree as follows:

## ARTICLE I

### **GENERAL**

Section 1.1 Definitions. Words and terms that are used herein as defined terms shall (unless otherwise defined herein or unless the context clearly requires otherwise) have the following meanings:

**"Acquisition Price"** means the price to be paid by the Purchaser to the County under this Agreement for the purchase of the Facility Assets.

**"Act of Bankruptcy"** means that the Purchaser (a) shall have commenced a voluntary case under any bankruptcy law, applied for or consented to the appointment of, or the taking of possession by, a receiver, trustee, assignee, custodian or liquidator of all or a substantial part of its assets; (b) shall have failed, or admitted in writs inability, generally, to pay its debts as such debts become due; (c) shall have made a general assignment for the benefit of creditors; (d) shall have been adjudicated a bankrupt, or shall have filed a petition or an answer seeking an arrangement with creditors; (e) shall have taken advantage of any insolvency law or shall have submitted an answer admitting the material allegations of a petition in bankruptcy or insolvency proceeding; or (f) an order, judgment or decree for relief in respect of the Purchaser shall have been entered in an involuntary case, without the application, approval or consent of the Purchaser by any court of competent jurisdiction appointing a receiver, trustee, assignee, custodian or liquidator for the Purchaser or for a substantial part of any of its assets and such order, judgment or decree shall continue unstayed and in effect for any period of one hundred eighty (180) consecutive days; (g) the Purchaser shall have filed a voluntary petition in bankruptcy; (h) the Purchaser shall have failed to remove an involuntary petition in bankruptcy filed against it within one hundred eighty (180) days of the filing thereof; or (i) an order for relief shall have been entered against the Purchaser under the provisions of the United States Bankruptcy Act, 11 U.S.C.A. § 301.

**"Agreement"** means this "Asset Purchase Agreement," including the Schedules hereto and any written amendments hereto or supplement hereto that may be executed from time to time by the Parties hereto.

**"ALTA Policy"** means a Standard American Land Title Association Owner's Form Policy of Title Insurance with respect to the Facility Real Property, issued by a title insurance company selected by the Purchaser and authorized to insure titles to real property in the State.

**"Applicable Laws"** means the CCRC License, the MALF License and any statute, law, constitution, charter, ordinance, resolution, judgment, order, decree, rule, regulation, directive, interpretation, ordinance, standard or similarly binding authority, which shall be enacted, adopted, promulgated, issued or enforced by a Governmental Body relating to the Purchaser, the Facility, the Facility Assets, the Facility Real Property, the County (to the extent related to the Facility and/or the Facility Assets), including, but not limited to, permits, licenses, certificates of occupancy.

**"Assumed Contracts"** is defined in Section 2.14.

**"CCRC"** means the Citizens Care and Rehabilitation Center, a 170-bed skilled nursing facility, located at 1910 and 1920 Rosemont Avenue, Frederick, Maryland 21702, that is presently owned and operated by the County.

**"CCRC License"** means the license issued by the DHMH to the County, pursuant to which the County operates the CCRC as a 170-bed skilled nursing facility, together with all other rights and obligations the County may have.

**"CCRC Licensed Capacity"** means the number of licensed beds (170) at the CCRC, as evidenced by the CCRC License.

**"Closing Date"** means \_\_\_\_\_, 2013 or such later date as after the appropriate Governmental Bodies have approved the transfer contemplated herein as determined by the County.

**"Contract Date"** means the date of execution of this Agreement by all Parties.

**"County"** means County Commissioners of Frederick County, Maryland, a body politic and corporate and a political subdivision of the State of Maryland.

**"DHMH"** means the Maryland Department of Health and Mental Hygiene, or any successor agency to which the powers of the DHMH have been transferred.

**"DHMH Approval"** means approval by the DHMH of the transfer of the CCRC License and the MALF License from the County to the Purchaser.

**"Environmental Laws"** means all federal, state, county and local laws, rules, ordinances, regulations, governmental, administrative or judicial orders or decrees or other legal requirements of any kind governing pollution or contamination of the environment, occupational health and safety.

**"Environmental Permits"** means all permits, authorizations, approvals, registrations, certificates, licenses or consents required by Environmental Laws in connection with the County's ownership of the Facility Assets and the County's operation of the Facility.

**"Event of Default"** means any event which is specified as such under the terms of Article VI hereof.

**"Excluded Assets"** is defined in Section 2.3.

**"Excluded Liabilities"** is defined in Section 2.19.

**"Facility"** means, collectively, the CCRC and MALF.

**"Facility Assets"** means, collectively, the Facility Business Assets, the CCRC Licensed Capacity, the MALF Licensed Capacity and the Facility Real Property all as set forth in Section 2.2 hereof.

**"Facility Business Assets"** means all assets of the Facility (other than the Facility Real Property, the CCRC Licensed Capacity and the MALF Licensed Capacity) and the property located within and related to the operation and maintenance of the Facility, including without limitation, (a) all equipment, machinery, fixtures, furniture, supplies, vehicles, computers and software belonging to the Facility and located within the Facility Real Property, (b) medical and business records (to the extent that transfer of such records is permitted under the provisions of applicable law), (c) assignment of residents' trust accounts; (d) assignable rights under leases, contracts, accounts and franchises; and (e) such other tangible property as shall be agreed to by the County and the Successful Proposer.

**"Facility Real Property"** means the Facility building and real property located at 1910 and 1920 Rosemont Avenue, Frederick, Maryland 21702.

**"Governmental Body"** means, as appropriate, anyone or several of: the United States of America, the State, the County, or any court of competent jurisdiction, agency, authority, regulatory body or political subdivision of the United States of America, the State or the County that may have jurisdiction over or power and authority to regulate the Purchaser, the Facility, the Facility Assets and/or the County (to the extent related to the Facility and/or the Facility Assets).

**"MALF"** means the Montevue Assisted Living Facility, a 75 unit assisted living facility, located at 1910 and 1920 Rosemont Avenue, Frederick, Maryland 21702, that is presently owned and operated by the County.

**"MALF License"** means the license issued by the DHMH to the County, pursuant to which the County operates MALF as a 75 unit assisted living facility, together with all other rights and obligations the County may have.

**"MALF Licensed Capacity"** means the number of licensed units (75) at MALF, as evidenced by the MALF License.

**"Material Adverse Change"** means a material adverse change in the business, assets, condition, or operations of the Facility business taken as a whole.

**"Permitted Encumbrances"** means any of the following encumbrances to the extent that such encumbrances do not materially impair the ability of the Purchaser to utilize the Facility Real Property in the manner contemplated by the terms of this Agreement:

(a) minor defects and irregularities in the title to the Facility Real Property that do not materially impair use of the Facility Real Property in the manner contemplated by the terms of this Agreement or render title to the Facility Real Property unmarketable;

(b) easements, exceptions, restrictions or reservations, and rights-of-way for the purpose of pipelines, telephone lines, telegraph lines, power lines and substations, roads, streets, highways, railroad purposes, drainage and sewerage purposes, or canals, laterals, ditches, and other like purposes, or for the joint and common use of the Facility Real Property that do not materially impair the use of such property for the purposes for which it is or may reasonably be expected to be held; provided, however, that the ALTA Policy issued at Closing affirmatively insures against the Purchaser's loss or damage arising out of or relating to such items or by

reason of any encroachment, overlap, boundary dispute or private easement, and further insures that none of such items interfere with the use of the Facility Real Property as a long term care facility;

(c) rights reserved to or vested in any municipality or governmental or other authority to control or regulate or use in any manner any portion of the Facility Real Property which do not materially impair the use of such property in the manner contemplated by the terms of this Agreement;

(d) any obligations or duties affecting any portion of the Facility Real Property of any municipality or governmental or other public authority with respect to any right, power, franchise, grant, license or permit; and

(e) present or future zoning laws and ordinances.

"Phase I Report" means that certain environmental assessment report provided to the Purchaser by the County conducted by ECS Mid Atlantic LLC dated February 1, 2013.

"Purchaser" means \_\_\_\_\_, Aurora Holdings VII, LLC, or its successors or permitted assigns.

"State" means the State of Maryland.

Section 1.2 Interpretation. The terms "herein," "hereunder," "hereby," "hereto," "hereof," and similar terms, refer to this Agreement; the term "heretofore" means before the Contract Date; and the term "hereafter" means after the Contract Date. Unless otherwise noted, the words "include," "includes," and "including," as used in this Agreement, shall be deemed to be followed by the phrase "without limitation." The words "agree," "agreements," "approval," and "consent," as used in this Agreement shall be deemed to be followed by the phrase "which shall not be unreasonably withheld or unduly delayed," except as may otherwise be specified.

Words importing the masculine gender include the feminine gender or the neuter and vice versa, as the case may be. Words importing the singular number include the plural number and vice versa.

Section 1.3 Time of the Essence. All dates and times set forth in this Agreement are "OF THE ESSENCE", the specified time and dates in this Agreement shall be performed on or before such time as set forth in this Agreement.

## ARTICLE II

### CONVEYANCE OF THE FACILITY ASSETS

Section 2.1 General. In order to effectuate the transactions contemplated by this Agreement, on the terms and conditions set forth below, (i) the County shall, on the Closing Date, convey the Facility Real Property and the Facility Business Assets to the Purchaser; and (ii) assign and transfer to the Purchaser the CCRC License and the MALF License and any and

all rights the County may have in respect of licensed and/or approved beds or units at the Facility.

**Section 2.2 Description of Facility Real Property and Assets.**

(a) **Real Property.** The Facility Real Property being conveyed by the County to the Purchaser is the property currently designated Liber \_\_\_, Folio \_\_\_, in the Land Records of Frederick County, Maryland.

In conveying the Facility Real Property, the County shall also convey to the Purchaser all right, title, and interest of the County, if any, in and to (i) the land constituting any public street, road or avenue, opened or proposed, in front of, adjoining or dissecting the Facility Real Property, (ii) all privileges appurtenant or related to the Facility Real Property, and (iii) all easements, rights-of-way of use, privileges, licenses, appurtenances and rights belonging or appertaining to the Facility Real Property, except as set forth in Schedule 2.2(a).

(b) **Facility Business Assets.**

(i) **Licensed Skilled Nursing Care Beds.** All right, title and interest to One Hundred Seventy (170) licensed skilled nursing beds comprising the CCRC License Capacity under the CCRC License.

(ii) **Licensed Assisted Living Units.** All right, title and interest to Seventy-Five (75) licensed assisted living units comprising the MALF License Capacity under the MALF License.

(iii) **Fixtures and Improvements.** All buildings, works, structures, fixtures, construction in progress, improvements, betterments, installations, and additions constructed, erected, or located on or attached or affixed to the Facility Real Property and which are owned by the County.

(iv) **Vehicles.** All certificated vehicles (collectively the "vehicles") listed on Schedule 2.2(b)(iv).

(v) **Furniture and Equipment.** All beds, furniture, medical and nursing equipment, materials, appliances, spare parts, supplies, and other tangible personal property of every kind, character, and description (other than the inventories referred to in Section 2.2(b)(vi)) owned by the County and located on, and used at or primarily in connection with, the Facility and/or the Facility Real Property as of the Closing, including without limitation the assets and properties listed on Schedule 2.2(b)(v).

(vi) **Inventories.** All inventory (including food, supplies and drugs) on hand on the Closing Date. The present quantity of such inventory is sufficient for the County to serve adequately the patients of the Facility in the ordinary course.

(vii) **Computers.** To the extent assignment is permitted by any third party, all of the County's computer equipment and hardware including without limitation all central processing units, terminals, disk drives, tape drives, electronic



memory units, printers, keyboards, screens, peripherals (and other input/output devices), modems and other communication controllers, and any and all parts and appurtenances thereto, located on, and used at or primarily in connection with the Business and/or the Real Property, as of the Closing, and specifically including without limitation the computer equipment and hardware listed on Schedule 2.2(b)(vii).

(viii) Intellectual Property. To the extent assignment is permitted by any third party owner, all intellectual property relating to, or used in connection with the operation of, the Facility and/or the Facility Real Property, including without limitation the intellectual property listed on Schedule 2.2(b)(viii), and all rights to recover for infringement thereon.

(ix) Trade Names and Telephone Numbers. All right, title, and interest of the County in and to the names (including any website domain name) and telephone numbers listed on Schedule 2.2(b)(ix) and any derivative thereof, together with any goodwill associated with such name.

(x) Permits. To the extent assignable, all right, title, and interest of the County in, to, and under all permits and licenses (the "Permits") relating to, or used in connection with the operation of, the Facility and the Facility Real Property, or relating to the use, operation or enjoyment of the Facility Business Assets including without limitation the Permits listed on Schedule 2.2(b)(x).

(xi) Personal Property Leases. To the extent assignable, all right, title, and interest of the County in, to, and under the personal property leases (the "Leases") listed on Schedule 2.2(b)(xi), and all rights (including rights of refund and offset), privileges, deposits, claims, causes of action, and options in favor of the County relating or pertaining to the Leases or any thereof.

(xii) Contracts. All right, title, and interest of the County in, to and under the contracts and agreements listed on Schedule 2.2(b)(xii), and all rights (including rights of refund and offset), privileges, deposits, claims, causes of action, and options in favor of the County relating or pertaining to such contracts and agreements or any thereof (collectively the "Contracts"), specifically accepted by the Purchaser.

(xiii) Books and Records. Copies of all books, records of the County of whatever nature and wherever located that relate to the Assets or the operation of the Facility and that are necessary for the Purchaser's operation of the Facility after the Closing, including without limitation all financial and accounting records and all books and records relating to employees, the purchase of materials, supplies, and services, product research and development, the manufacture and sale of products, and dealings with customers, vendors, and suppliers of the Facility, and including, to the extent assignment is permitted by any third party owner thereof, computerized books and records and other computerized storage media and the software (including documentation and object and source codes) used in connection therewith.

(xiv) Patient and Supplier Data. All patient lists and patient data, vendor lists and vendor data, supplier lists and supplier data, and sales and promotional material and other sales related material relating to, or used in connection with the operation of, the Facility.

(xv) Surveys, Maps, and Diagrams. All surveys, maps, and building and machinery diagrams and plans in the possession of the County relating to the Facility Assets.

(xvi) Deposits. All right, title, and interest of the County in and to all of the resident security deposits (collectively, the "Deposits").

(xvii) Other Rights. All rights, claims, and causes of action of the County against third parties (including the County's predecessors in title to the Facility Business Assets) in respect of the Facility or the Facility Assets, including without limitation insurance claims, unliquidated rights under manufacturers' and vendors' warranties, rights of recovery, set offs, and credits.

(xviii) Warranty of Claims. All rights, claims, and causes of action of the County under or pursuant to all warranties, representations, indemnifications, hold harmless provisions, and guarantees made by suppliers, licensors, manufacturers, contractors, and others (including the County's predecessors in title to the Facility Business Assets) in respect of the Facility or the Facility Assets.

Section 2.3 Excluded Assets. Notwithstanding any statement or provision contained in this Agreement to the contrary, all Facility Assets not otherwise set forth in Section 2.2 and which are associated with the County's operations of the Facility are not intended by the parties to be a part of the Facility Assets that are being purchased hereunder and are hereby expressly excluded from such purchase and the definition of the term "Assets" (collectively, the "Excluded Assets") including but not limited to:

(a) cash and cash equivalents as of the Closing Date, including investments in marketable securities, certificates of deposit, bank accounts, temporary investments, and the prepaid expenses and deposits listed attached;

(b) all accounts receivable arising out of or relating to all periods ending prior to the Closing Date, including all accounts receivable arising from the rendering of services and provision of medicine, drugs and supplies to patients at the Facility prior to the Closing Date;

(c) all other current assets of the County of the type historically included in the County's calculation of its net working capital or shown on its balance sheets;

(d) all claims, rights, interests and proceeds (whether received in cash or by credit to amounts otherwise due to a third party) with respect to amounts overpaid by the County to any third party with respect to periods prior to the Closing Date, and rights to settlements and retroactive adjustments, if any, whether arising under a cost report of the County or otherwise, for cost reporting periods ending at or prior to the Closing Date, whether open or closed, arising out of or relating to the County's arrangements with any payor;

(e) all inventory, prepaid expenses and other Assets disposed of, expended or exhausted prior to the Closing Date in the ordinary course of business and items of equipment and other Facility Business Assets transferred or disposed of prior to the Closing Date in a manner permitted in this Agreement;

(f) all records or other materials that the County is required by law to retain in its possession and all records related to the Excluded Assets or the Excluded Liabilities, as well as charter documents, minute books, stock ledgers, tax identification numbers, books of account and other constituent records relating to the organization of the Facility;

(g) except for the policy and procedure manuals that constitute Facility Assets under Section 2.2(b)(xii), above, the County's employee or operation manuals, third party reimbursement systems and manuals, policies and procedures and all information that does not pertain to the continuing operations of the Facility;

(h) rights of recovery, rights of setoff, claims, defenses, demands and causes of action of any nature available to or being pursued by the County at the Closing Date, that arise out of the operations of the Facility or the Facility Assets prior to the Closing Date, whether or not accrued and whether or not disclosed, and all rights and defenses in respect of indebtedness and other obligations not assumed by the Purchaser hereunder;

(i) rights to tax refunds, claims under or proceeds of insurance policies related to the Facility or the Facility Assets resulting from periods prior to the Closing Date, and the right to pursue appeals of the same;

(j) the intellectual property not used at the Facility;

(k) other than as specified in Sections 2.2(b)(viii) and 2.2(b)(ix), all trade names, trademarks and service marks (or variations thereof), copyrights, symbols, logos, domain names, email addresses and any other business names that are proprietary to the County, all goodwill associated therewith, and all applications and registrations associated therewith, together with any promotional material, stationary, supplies or other items of inventory bearing such names or symbols or abbreviations or variations thereof;

(l) other than as specified in Section 2.2(b)(vii), all software installed on personal computers or servers owned by the County and located at the Facility, together with all computer or software manuals, procedures and other materials relating thereto;

(m) reserves or prepaid expenses related to the Excluded Assets and the Excluded Liabilities;

(n) all employee benefit plans and funds and accounts of all employee retirement, deferred compensation, health, welfare or benefit plans and programs, and any contracts or agreements related thereto, and any Facility Asset that would revert to the employer upon the termination of any employee benefit plan, including assets representing a surplus or overfunding of any employee benefit plan;

(o) all writings and other items protected from discovery by the attorney-client privilege, the attorney work product doctrine or any other cognizable privilege or protection;

(p) the electronic funds transfer accounts of the Facility into which payments are made on account of patient accounts receivable and all information necessary to access such accounts; and

(q) accrued payroll and taxes relating thereto; and

(r) rights that accrue to the County under all of the County's contracts and agreements that are not included in the Assumed Contracts and under this Agreement.

#### Section 2.4 Acquisition Price for Facility Assets

(a) (a) With respect to the conveyance of the Facility Real Property and the Facility Business Assets by the County to the Purchaser, the Purchaser shall pay the Acquisition Price to the County. The Acquisition Price shall be a total of Thirty Million Dollars (\$30,000,000.00) and other good and valuable consideration set forth in this Agreement. Except as specifically provided in this subsection (a), ~~payment in full of the Acquisition Price by the Purchaser shall be made on the Closing Date. Agreement, payment in full of the Acquisition Price by the Purchaser shall be made on the Closing Date.~~ At Closing, Purchaser shall receive a credit against the Acquisition Price which will reflect the net amount due Purchaser for the amount set forth on a written statement delivered by County to Purchaser at Closing reflecting the total amount of accrued but unpaid vacation pay, accrued sick pay and accrued "free" or personal days applicable to the period prior to the Closing Date which would be payable to Transferred Employees of the Facility if such Transferred Employees remained with County long enough to earn in full such unpaid vacation pay, sick pay and free days, regardless of whether such time has been vested or posted to the employee's annual balance (the "Unpaid Benefit Amount").

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(b) (b) The Purchase Price shall be satisfied by:

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(i) The payment by the Purchaser of \$200,000 at time of bid plus (\$2,800,000.00) Two Million Eight Hundred Thousand (\$2,800,000.00) Dollars ~~i.e., for a total deposit of 10% of the purchase price} Three Million (\$3,000,000.00) Dollars~~, upon the execution of this Agreement as a deposit (collectively, the "Deposit"), which Deposit shall be ~~non-refundable and immediately released to the County; and held by the Escrow Agent;~~

(ii) At Closing, the Purchaser shall deliver to the Escrow Agent Three Hundred Thousand (\$300,000.00) Dollars, which shall be held by Escrow Agent pursuant to the Escrow Agreement as security for the County's performance of its obligations under Section 6.9(b); and

(ii)(iii) At Closing, after applying the Deposit, ~~delivery of~~  
~~( \$ ) Dollars by the Purchaser to the~~  
which shall be paid over by the Escrow Agent to County at Closing, the Purchaser shall  
deliver to County the balance of the Acquisition Price (as such amount may be adjusted  
pursuant to this Agreement) in immediately available funds, by certified check, bank  
check, or electronic wire transfer to the County's designated bank account, representing the  
balance of the Acquisition Price.

(e)(b) As of the Closing Date, expenses of a recurring nature that are incurred in connection with the Facility in the ordinary course of business, including those set forth below, shall be prorated in accordance with generally accepted accounting principles, so that all such expenses for periods on or prior to the Closing Date shall be for the account of the County, and all such expenses for periods after the Closing Date shall be for the account of the Purchaser and any such adjustments shall be added or deducted from the Acquisition Price, as the case may be.

(i) Current municipal water and sewer charges, if any, for the Facility Real Property shall be apportioned between the Purchaser (on the one hand) and the County (on the other hand) as of the Closing Date.

(ii) The full amount of all unpaid assessments for municipal improvements, if any, including without limitation, any assessments that are payable in installments of which the first installment is due or payable on or prior to the Closing Date, shall be deducted from the Acquisition Price. The amounts of any unpaid assessments for municipal improvements, if any, including without limitation, any assessments that are payable in installments due or payable after the Closing Date shall be apportioned as of the Closing Date.

(iii) All amounts prepaid or payable under the leases, contracts, accounts and franchises being transferred hereunder shall be apportioned as of the Closing Date. The County shall prepare and deliver to Purchaser, prior to the Closing, a written statement which shall set forth all prepayments of private pay or other patient revenues on account of services to be rendered or supplied on or after the Closing Date that were received by the County prior to the Closing Date.

(iv) Any and all real and personal property taxes accruing on and after the Closing Date shall be the sole responsibility of the Purchaser. The Purchaser understands that the Facility Assets have been exempt from Maryland real and personal property taxes based on the governmental status of the County, that such exempt status will no longer apply as of the Closing Date, and that the Purchaser has sole responsibility for obtaining property or other tax exemptions that may be available for Facility Assets.

(v) The Purchaser understands that Maryland sales and use tax will apply to any portion of the Purchase Price allocable to assets subject to such taxes and that it is the Purchaser's responsibility to (A) pay any and all such taxes or (B) provide the County with documentation demonstrating entitlement to an exemption, if applicable, from such taxes.

(vi) In the event that any of such items cannot be determined at or prior to Closing the parties agree to adjust such items as soon as determinable after Closing, which obligation shall survive Closing.

**Section 2.5 Deposit.**

(a) Upon the execution and delivery of this Agreement to the County or the County's attorney, the Purchaser shall place the Deposit with the County's escrow agent, Wilmington Trust Company, NA (the "Escrow Agent"), which Deposit shall be kept by the Escrow Agent in a non-interest bearing trust account. The Deposit shall be applied to the Acquisition Price in accordance with this Agreement.

**Section 2.6 Allocation of Purchase Price.** The Purchaser and the County agree to allocate the Purchase Price in accordance with the allocation set forth on Schedule 2.6, to be bound by such allocation, to account for and report the purchase and sale of the Facility Assets contemplated hereby for federal and state tax purposes in accordance with such allocations, and not to take any position (whether in tax returns, tax audits, or other tax proceedings), that is inconsistent with such allocations without the prior written consent of the other Party. In this regard, the Parties agree that, to the extent required, they will each properly prepare and timely file form 8594 in accordance with Section 1060 of the Internal Revenue Code, as amended (the "Code"). The Purchaser understands that the County financed certain costs of the Facility Assets with proceeds of various the County's bond issues, the County must take certain remedial or other actions in order to preserve the tax-advantaged status of those bonds for federal income tax purposes, and the allocation of the Purchase Price for County purposes may be established in connection with such remedial or other actions.

**Section 2.7 Representations of the County.**

(a) With respect to the Facility Real Property, the County represents to the Purchaser, as follows:

(i) The County has provided the Purchaser with a survey with respect to the Facility Real Property. The County represents that, to the best of its knowledge, such survey is true and accurate as of the date hereof.

(ii) The County represents that the County has or will have on the Closing Date, good, valid and marketable title to the Facility Real Property, free and clear of all liens, mortgages, deeds of trust, judgments, pledges, title defects, encumbrances, leases, security interests (UCC or otherwise, including without limitation, security agreements, chattel mortgages, conditional sale contracts, collateral security agreements, leases and other title or interest retention arrangement ), actions, claims, charges, conditions or restrictions of any nature whatsoever, except the Permitted Encumbrances. Marketable title, for purposes of this subsection 2.7(a) shall be such title as will be insured at regular rates by the Title Insurer on the ALTA Policy, without exception, except for Permitted Encumbrance. Neither the whole nor any portion of the Facility Real Property has been condemned or otherwise taken by any public authority during the County's ownership of the Facility Real Property, and to the best of the County's

knowledge no such condemnation or taking is threatened or contemplated. Except as otherwise disclosed to the Purchaser, there are no agreements, written or oral, affecting the occupancy of the Facility Real Property, and no person, firm or corporation has any right, title or interest to possession of the Facility Real Property (or any portion thereof) or to possession of the Facility Real Property as a tenant of the County.

(iii) The County represents that to the best of its knowledge there are no outstanding notices or orders from any governmental authority with respect to the condition of the Facility Real Property or with respect to any claim of violation of laws, ordinances, statutes, codes, regulations and orders applicable thereto. Any notices issued by any Governmental Body with respect to the Facility Real Property subsequent to execution of this Agreement and prior to the Closing Date that are required by law shall be cured at the County's cost as soon as reasonably possible by the use of diligence after receipt of such notice. If any such notices are issued and not cured, then such notices of violation shall be deemed to be an objection to title and the Purchaser shall have the right set forth in Section 2.9 hereof with respect thereto.

(iv) The parking lot in the rear of the Facility has been, or shall be prior to Closing, completed in full.

(b) With respect to the Facility Business Assets, the County represents to the Purchaser, as follows:

(i) The County shall convey to the Purchaser at the closing all of its right, title, and interest in and to the Facility Business Assets by bills of sale and other appropriate documents reasonably satisfactory to the Purchaser, free and clear of any claim, suit, proceeding, restriction, limitation, security interest, pledge, lien or encumbrance of any kind or nature, except as otherwise provided herein.

(ii) The Facility Business Assets are as of the Contract Date, and will be as of the Closing Date, (i) in good repair and condition, (ii) suitable and sufficient for the conduct of the present business of the Facility, and (iii) free and clear of any claim, lease, mortgage, security interest, conditional sale agreement or other title retention agreement, restriction or lien or encumbrance.

Section 2.8 Closing: The consummation of the sale and purchase of the Facility Assets and the other transactions contemplated by and described in this Agreement (the "Closing") shall take place at the offices of Venable LLP, 750 E. Pratt St., Suite 900, Baltimore, Maryland 21202, or at such other location as the Parties may mutually designate in writing on the Closing Date. The Closing Date shall occur no later than 90 days after the date of DHMH Approval and in no event later than ~~August~~September 1, 2013.

#### Section 2.9 Title and Costs.

(a) The Purchaser and the County acknowledge that title to the Facility Assets will be transferred to the Purchaser at Closing. Title to the Facility Real Property given will be marketable and insurable at regular rates by any reputable title insurance company selected by the Purchaser which is authorized to transact business in the State of Maryland and subject to

existing restrictions and easements of record or visible on the ground, ordinances, easements of roads, privileges and rights of public services and utility companies, if any. If title to the Facility Real Property is not, at Closing, insurable as herein set forth, the Purchaser shall notify the County and the County shall have an additional thirty (30) days to cure such defect. If the County does not cure such defect within such additional period, the Purchaser may elect, as its sole right and remedy, (i) to take such title as the County can convey, with abatement of the Purchase Price only to the extent of monetary liens of a fixed amount; or (ii) to terminate this Agreement, in which event, the Deposit shall be returned to the Purchaser and this Agreement shall be deemed null and void and of no force and effect, and no party hereto shall have any further rights, obligations or liabilities hereunder.

(b) The County shall pay for preparation of the deed, and one-half of all applicable transfer and recordation taxes associated with the transfer. The Purchaser shall pay for recording the deed, for any and one-half of all recordation and transfer taxes associated with the transfer, for all searches, survey, all title company settlement charges and title insurance costs and for all other conveyancing and closing expenses. Each party shall pay its own legal fees.

Section 2.10 Brokerage. The Purchaser warrants and represents to the County that the Purchaser has not dealt with any broker, agent or other party who might be deemed to be entitled to a commission or finder's fee in connection with the transactions contemplated under this Agreement, except for Marcus & Millichap ("Broker"), whose total commission or fee (if any) relates to the Acquisition Price for all Facility Assets subject of this Agreement. The Purchaser will indemnify, defend and hold harmless the County from and against any claim for a commission or finder's fee made by any other party by, through or under the Purchaser, and the County will indemnify, defend and hold harmless the Purchaser from and against any claim for a commission or finder's fee made by any party by, through or under the County, including the Broker. This Article shall survive the Closing or other termination of this Agreement.

Section 2.11 County to Remain Liable. Subject to the provisions of Article III of this Agreement, the Parties agree that the County shall remain responsible for all obligations, liabilities, debt, claims and audits, known or unknown, arising from, or attributable to the operation of the Facility, the Facility Real Property, and the Facility Business Assets, for all periods up to and including the Closing Date.

Section 2.12 DHMH Jurisdiction and Jurisdiction of Other Governmental Body. The Parties understand and acknowledge that consummation of the transactions contemplated herein requires the DHMH to approve the transfer of the CCRC License and the MALF License from the County to the Purchaser. The Purchaser shall be responsible for submitting an application for transfer of the CCRC License and the MALF License, within five (5) days of the Contract Date, and provide copies of such submissions to the County simultaneously upon submission to DHMH. The Purchaser shall use all reasonable efforts and due diligence in the procurement of such approval and the County shall reasonably cooperate in such effort. The County shall cooperate with the Purchaser in providing information that is reasonably required by the Purchaser in, connection with the review and/or approval by the DHMH of the Purchaser's application for transfer of the CCRC License and the MALF License. Any information that has been filed with the DHMH (except any information that has been identified in such filing as proprietary or confidential and has been accorded protected or confidential status by such



regulatory agency) or otherwise has been made available to the public shall not, under any circumstances, constitute confidential or proprietary information. The County shall comply with the requirements of DHMH under the provisions of COMAR 10.09.10.15(A), including, without limitation, causing a bond, letter of credit or other assurance satisfactory to DHMH to be issued in favor of DHMH in the amount required under, and to be otherwise held in accordance with, COMAR 10.09.10.15(A)(2). Upon a request from Purchaser, the County shall confirm how and when it has (or will) satisfy such requirements.

**Section 2.12**

In the event that the DHMH requires any amendment(s) to this Agreement in connection with the Purchaser's application for transfer of the CCRC License and the MALF License, the Purchaser shall notify the County within five (5) days of receipt of notification by the DHMH setting forth such required amendment(s).

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**Section 2.13** Section 2.13 Governmental Applications. Within five (5) days of the date hereof, the Purchaser shall file all other applications as may be required by the State of Maryland, the federal government, the local governments where the Facility is located, and/or any other governmental agency, department or political subdivision in order to obtain any other license or permit that may be required in order to operate the Business.

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**Section 2.14** Section 2.14 Executory Contracts. Prior to the execution of this Agreement the Purchaser shall provide written notice to the County of all of County executory contracts described in Section 2.2(b)(xii) which the Purchaser desires to accept (the "Assumed Contracts"). All of such contracts which the Purchaser does not notify the County, as set forth above, shall be terminated pursuant to each contract's term at or prior to Closing.

**Section 2.15** Section 2.15 Rights and Obligations of County and Purchaser. The rights and obligations of the Parties shall be only as expressly stated herein and shall not be expanded, modified, extended or in any way changed by any subsequent change in circumstances or federal, state, county or local, statutory or common law, except as expressly provided for herein.

**Section 2.16** Section 2.16 Closing Deliverables.

(a) On the Closing Date, as a condition precedent to the obligation of the Purchaser hereunder, the County shall deliver to the Purchaser the following (unless expressly waived in writing by the Purchaser):

(i) Bill of Sale and Assignment and Assumption Agreement.  
A signed counterpart page to the Bill of Sale and Assignment and Assumption Agreement in the form attached hereto as Exhibit A;

(ii) Deed. A bargain and sale deed with covenants against grantor's acts, duly executed and acknowledged by the County and in proper form for recording and a customary affidavit of title duly executed and acknowledged by the County;

(iii) Authorizing Resolutions. Resolution(s) of the Board of County Commissioners of Frederick County authorizing the County to execute this Agreement and the closing documents;

(iv) Documentation and Material Regarding Facility Real Property. Any keys, existing plans, specifications, architectural and engineering drawings, utilities layout plan, manuals, service and maintenance logs, paid invoices and similar documents relating to the Facility Real Property, and other documentation used in the construction, alteration or repair of the Facility, to the extent within the County's possession;

(v) Section 1445 Certificate. A certificate of the County warranting that it is not a foreign person as defined under Section 1445 of the Internal Revenue Code;

(vi) Physical Possession. Actual physical possession of the Property;

(vii) Certificate of Representations and Warranties. A certificate, dated as of the Closing Date, signed by the County certifying that all of the representations and warranties made by the County in this Agreement are true, accurate and complete as of the Closing Date;

(viii) Manuals. All instructions, manuals and warranties that relate to any equipment used at the Facility to the extent in the County's possession; and

(ix) Other Documents. Such further documentation as the Purchaser or its attorneys may reasonably request.

(b) Purchaser's Closing Deliverables. On the Closing Date, and as a condition precedent to the obligation of the County hereunder, the Purchaser shall deliver to the County the following (unless expressly waived in writing by the County):

(i) Purchase Price; Deposit; Closing Date Payment. The Purchaser shall deliver the Purchase Price to the County;

(ii) Bill of Sale, Assignment and Assumption Agreement. A signed counterpart page to the Bill of Sale and Assignment and Assumption Agreement in the form attached hereto as Exhibit A;

(iii) Transfer of Licenses. The Approvals from the DHMH to transfer the CCRC License and the MALF License to the Purchaser;

(iv) Realty Transfer Fees. The Purchaser shall be responsible for any and one-half of all real estate recordation and transfer fees required by the laws of the State to be paid;

(v) Certificate of Representations and Warranties. A certificate, dated as of the Closing Date, signed by the Purchaser certifying that all of the representations and warranties made by the Purchaser herein are true, accurate and complete as of the Closing Date;

(vi) Organizational Documents. Copies of the certificate of formation and other organizational documents of the Purchaser, certified true and correct as of the Closing Date, and a Certificate of Good Standing of the Purchaser from the jurisdiction in which it is organized, dated not more than 30 days prior to the Closing Date; and

(vii) Other Documents. Such further documents as the County or their attorney may reasonably request.

Section 2.17 County's Disclosures to Purchaser. The County has delivered the following documents to the Purchaser prior to or simultaneously with the execution of this Agreement:

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(a)(c) A copy of the most recent survey and inspection report for the Facility issued by DHMH and/or any Governmental Body

(b)(d) A copy of the Phase I Report.

(e)(e) LIST ALL OTHER DOCUMENTS ON DATA SITE

The County does not make any representations or warranties, other than as may be set forth herein as to the accuracy or completeness of any of the documents listed in this Section 2.17. Notwithstanding any provision hereof to the contrary, the County may, in its sole discretion, retain copies of any and all documents provided to the Purchaser.

Section 2.18 Assumed Liabilities. As of the Closing Date and in connection with the conveyance of the Facility Assets to the Purchaser, the Purchaser agrees to assume, as of the Closing, the future payment and performance of only the following liabilities in respect of the Facility (collectively, the "Assumed Liabilities"): (a) the obligations of the County under the Assumed Contracts solely to the extent arising out of periods after the Closing Date; (b) all other obligations of the Purchaser under this Agreement; and (c) any violation of the Worker Adjustment and Retraining Notification Act (together with similar state laws, the "WARN Act") with respect to operation of the Facility as a result of the consummation of the transactions contemplated by this Agreement (provided that the County has, with respect to the operation of the Facility, complied with the WARN Act prior to the Closing Date). Except solely for the Assumed Liabilities, the Purchaser shall not assume, shall not be liable for and shall have no obligation to pay or assume, any of the County's liabilities or obligations, including any liability or obligation of the County arising out of or relating to the Facility Assets, including the operation of the Facility.

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Section 2.19 Excluded Liabilities. Except solely for the Assumed Liabilities, all of the County's liabilities and obligations, including all liabilities arising out of or relating to the Facility Assets other than the Assumed Liabilities, shall remain the sole

responsibility of, and shall be satisfied by, the County, including the following: (a) any liability, indebtedness, commitment, or obligation of the County, whether known or unknown, fixed or contingent, recorded or unrecorded, currently existing or hereafter arising; (b) any liability or obligation arising out of or relating in any manner to the conduct or operation of the Facility prior to the Closing Date, including any overpayments made by Medicare or Medicaid for services rendered at the Facility prior to the Closing Date; (c) any liability or obligation arising out of or relating to the ownership or use of the Facility Assets prior to the Closing Date, whether (in any case) fixed or contingent, recorded or unrecorded, known or unknown, currently existing or hereafter arising, and whether or not set forth or described in the schedules hereto; or (d) any obligations or liabilities with respect to any Excluded Assets (all of the foregoing, collectively, the "Excluded Liabilities").

Section 2.20 Conditions to Obligations of All Parties. The obligations of each of Purchaser and County under this Agreement to cause the transactions contemplated by this Agreement to be consummated are, at its option, subject to the satisfaction of the following conditions:

(a) Governmental Approvals. Purchaser and County shall have received all approvals of the applicable Governmental Bodies and the applicable Governmental Bodies shall have taken all actions, required to permit the consummation of the transactions contemplated by this Agreement and to permit Purchaser to operate the Facility after the Closing, which shall include, but not be limited to, Purchaser's receipt of (i) a letter from The State of Maryland Department of Health and Mental Hygiene, Office of Health Care Quality issuing a license to operate 170 comprehensive care facility beds and a 75-unit assisted living facility upon the transfer of ownership of the Facility, and (ii) a letter from The Maryland Health Care Commission (the "Commission") approving the planned acquisition without requiring a certificate of need or other regulatory review by the Commission.

(b) No Injunctions. There shall not be in force any order or decree restraining or enjoining consummation of the transactions contemplated by this Agreement or placing any limitation upon such consummation or to invalidate, suspend or require modification of any provision of this Agreement.

(c) Environmental Matters. Purchaser shall be satisfied with the results of any Phase II environmental examination relating to the Facility, which examination, shall be obtained by Purchaser, at its sole cost, and from the date of the Contract Date until the Closing Date, there shall not have been any change in any material respects in the environmental condition of the Property, it being understood that unless Purchaser notifies the County to the contrary prior to thirty (30) days after the Contract Date, Purchaser shall be deemed to have accepted the condition of the Facility as to environmental matters as of such date.

(d) Access, Utilities and Parking. The buildings and structures included in the Facility Real Property shall have access to (i) public roads and (ii) water supply, storm and sanitary sewer facilities, telephone, gas and electrical connections, fire protection, drainage and other public utilities, as is necessary for the conduct of the business and the Facility shall have adequate parking included in the Facility Real Property to meet any applicable zoning, licensure or other legal requirements.

(e) Compliance. The Facility shall be in substantial compliance with the Maryland Department of Health and Mental Hygiene and CMS.

### ARTICLE III

#### **ENVIRONMENTAL CONDITIONS; DUE DILIGENCE; INSPECTIONS**

##### **Section 3.1 Due Diligence.**

(a) The Purchaser hereby confirms that the Purchaser has conducted, or shall conduct, any and all inspections of the Facility and the Facility Real Property (which, for purposes of this Article III, shall be called the "Premises"), and completed any due diligence in connection therewith, including, without limitation, title, flood, tidelands and zoning investigation, structural investigation, soil tests, surveys, engineering studies, geo-technical studies, environmental studies and investigations and physical inspections of the Premises (the "Investigations"). ~~Prior to bidding on the Property and~~, within thirty (30) days after the execution of this Agreement.

##### **Section 3.2 Environmental Conditions.**

(a) The County has provided the Purchaser with the Phase I Report concerning the environmental conditions at the Premises (see Appendix A to the Requests for Proposals).

(b) The Purchaser shall be solely responsible and liable for and shall fully protect, indemnify, defend, and hold harmless the County, its elected officials, officers, directors, agents, employees, representatives, affiliates, successors and assigns, from and against any and all causes of action, claims, charges, costs, damages, enforcement actions, directives, fines, injuries, judgments, liabilities, losses, penalties, and all costs and expenses incidental thereto, including, without limitation, reasonable attorneys' fees, expert and consultant fees and laboratory costs, arising at law or in equity, of every kind or nature whatsoever, whether direct or indirect, known or unknown, which the County, may hereafter incur, become responsible for or payout as a result of Hazardous Substance located on, at or under the Premises resulting from the Purchaser's use of the Premises after the Closing.

(c) This Section 3.2 shall survive the Closing.

### ARTICLE IV

#### **REPRESENTATIONS AND COVENANTS**

**Section 4.1 Representations of the Purchaser.** The Purchaser hereby represents and warrants to the County as follows:

(a) The Purchaser is a \_\_\_\_\_ limited liability company organized and existing under, and governed by, the laws of the State of \_\_\_\_\_, Maryland, and it is duly qualified to transact business in each and every

jurisdiction where such qualification is required to enable the Purchaser to perform its obligations under the terms of this Agreement. No act of Bankruptcy has been commenced by or against the Purchaser. The execution of this Agreement, and the performance of all obligations under this Agreement, have been authorized by all required action of the Purchaser, all as required by the charter, by-laws and Applicable Laws that regulate the conduct of the Purchaser's affairs. The execution of this Agreement and the performance of all obligations set forth herein do not conflict with and do not constitute a breach of or event of default under any charter or by-laws of the Purchaser, or any agreement, indenture, mortgage, contract or instrument to which the Purchaser is a party or by which the Purchaser is bound so that, upon execution hereof and upon satisfaction of the conditions herein contained, this Agreement constitutes the valid, legally binding obligations of the Purchaser, enforceable against the Purchaser in accordance with its terms, except to the extent that enforcement thereof is limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or limiting creditors' rights generally and the application of the general principles of equity.

(b) The Purchaser represents that it possesses or will possess at Closing all licenses and approvals required under Applicable Laws to undertake and carry out its obligations under this Agreement.

(c) The Purchaser represents that it possesses or will possess at the Closing funds sufficient to pay the Acquisition Price for the purchase of the Facility Assets as set forth in this Agreement.

(d) There is no action, suit or proceeding, at law or in equity, before or by any court or similar Governmental Body against the Purchaser wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Purchaser of its obligations hereunder or the other transactions contemplated hereby, or that, in any way would materially adversely affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by the Purchaser in connection with the transaction contemplated hereby.

(e) Availability of Funds. The Purchaser has the ability to obtain funds in cash in amounts equal to the Purchase Price by means of a combination of a private offering of membership interests and credit facilities or otherwise and will at the Closing have immediately available funds in cash which will be sufficient to pay the Purchase Price and to pay any other amounts payable pursuant to this Agreement and to consummate the transactions contemplated by this Agreement.

(f) Track Record. Neither the Purchaser, nor any of its principals or affiliates operates, controls, or manages any health care facilities in the State of Maryland except for Aurora Senior Living of Manokin, LLC (the "Purchaser's Existing Facilities"), and with respect to the Purchaser's Existing Facilities, to the best of the Purchaser's knowledge and belief, there have been no violations or enforcement actions that would cause the denial of the transfer of ownership application pursuant to applicable laws and regulations of the State of Maryland. None of the Purchaser's principals have a history of criminal convictions of the type that would preclude approval of the application for licensure in accordance with State law.

(g) Residents. ~~{To be completed to reflect the terms of the Purchaser's proposal}~~ Purchaser shall not transfer any residents of the Facility to any of Purchaser's Existing Facilities. Purchaser agrees to the MOU, as set forth in Section 4.2(p). Any resident of the Facility as of the Closing Date shall be permitted to continue residing in the Facility indefinitely, provided such resident's condition is medically appropriate for that setting and they continue to pay the fees in place as of the Closing Date. Further, Purchaser shall accept new subsidized residents to MALF, provided the County agrees to pay the full private pay amount in place at the time of admission. Purchaser shall accept Medicaid and Medicaid pending residents to CCRC. Purchaser shall comply with all federal OBRA regulations pertaining to safe and appropriate discharge of residents. Purchaser shall give preference to admission of Frederick County residents, to the extent permitted by law. Purchaser shall give preference to admission of residents from MALF to CCRC, and from CCRC to MALF.

(h) Employment by Purchaser. ~~{IF NO CONDITIONED SALE}~~ Prior to the Closing Date, the Purchaser shall consider the reemployment of the County Employees who wish to be employed by the Purchaser. The Purchaser is specifically not obligated to employ all or any County Employee. All decisions concerning the hiring of County Employees by the Purchaser shall be made by the Purchaser in its sole discretion. ~~{Purchaser may extend offers of employment to any or all of County's employees. Such employees, who accept such employment offers from Purchaser, shall be referred to as the "Transferred Employees". At least ten (10) days prior to the Closing Date, Purchaser shall notify County of any employees who shall not be Transferred Employees. Purchaser shall not assume responsibility for any Transferred Employee until such employee commences employment with Purchaser. Nothing in this Section 4.1(h) shall, however, create any third party beneficiary or other rights in favor of any person not a party hereto, including employees of the Facility, or constitute an employment agreement or condition of employment for any employee of County who is a Transferred Employee.}~~

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~~{IF CONDITIONED SALE}~~ The Purchaser agrees that it shall, to the extent practicable retain all County Employees currently employed by the County at the Facility under the same terms and conditions such County Employees were employed by the County prior to the Closing Date.

Section 4.2 Representations of the County. The County represents and warrants to the Purchaser as follows:

(a) The County is duly qualified and has the power, authority, and legal right, to enter into and perform its obligations set forth in this Agreement.

(b) The execution, delivery, and performance of this Agreement (i) has been duly authorized by the governing body of the County, (ii) does not require any consent, approval or referendum of voters, and (iii) will not violate any Applicable Laws applicable to the County or any provisions of the County's resolutions, and (iv) has, or shall be, fully funded through proper appropriations.

(c) The execution of this Agreement, and the performance of all obligations set forth herein do not conflict with, and will not, nor with the passage of time or the giving of

notice, constitute a breach of or event of default under any charter, ordinances or resolutions of the County or any agreement, indenture, mortgage, trust, contract or instrument of Applicable Laws to which the County is a party or by which the County is bound. This Agreement has been duly executed and delivered and constitutes a legal, valid and binding obligation of the County, enforceable in accordance with its terms, except to the extent that the enforcement thereof is limited by any applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or limiting creditor' rights generally and the application of general principles of equity.

(d) Except as disclosed in Schedule 4.2(d), there is no action, suit or proceeding, at law or in equity, pending before or by any court or governmental authority against the County, where in an unfavorable decision, ruling or finding would materially adversely affect the performance by the County of its obligations hereunder or the other transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the County in connection with the transactions contemplated hereby.

(e) The County has the power, authority and legal right to convey the Facility Real Property and the Facility Business Assets to the Purchaser under all Applicable Laws.

(f) There are no restrictions, prohibitions or encumbrances on (or relating to) the Facility Real Property or Facility Business Assets that would inhibit, prohibit or in any way affect the ability of the Purchaser to make use of such Facility Real Property or Facility Business Assets in the manner contemplated by the terms of this Agreement.

(g) The County has complied in all material respects with all Applicable Laws applicable to the County, and has secured all necessary permits and authorizations and licenses issued by any Governmental Body required to be obtained by the County with respect to the Facility, if any, the violation of which (or the failure to secure) could have a material adverse affect on the business, operations, properties or assets or on the condition, financial or otherwise, of the Facility, a complete list of such permits, authorizations and licenses being set forth on Schedule 9 hereto.

(h) Subject to DHMH Approval, the County has the power, authority, and legal right to transfer the CCRC License and the MALF License to the Purchaser under all Applicable Laws.

(i) There are no audits, active suits or proceedings that (i) challenge the use of the CCRC as a skilled nursing facility, (ii) challenge the use of MALF as an assisted living facility, (iii) challenge or seek to change the CCRC Licensed Capacity or the MALF Licensed Capacity, (iii) challenge or seek to change the conditions of operation of the Facility set forth in any applicable certificate of need, or (iv) challenge the Facility's certification to participate in the Medicaid Program under Title XIX of the Social Security Act.

(j) The County is not a party to or obligated to contribute to any employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 ("ERISA"), guaranteed annual income plan, fund or arrangement, or any incentive, bonus, profit



sharing, deferred compensation, or any employment or consulting agreement, or any noncompetition agreement, or any severance or termination plans or policies, hospitalization, disability or other insurance plan, or any other employee fringe benefit plans, or any collective bargaining agreements, or any other agreement, plan or arrangement similar to or in the nature of the foregoing, oral or written, in each case that relate to the Facility, except those described on Schedule 4.2(j) hereto, true and correct copies of which were provided to the Purchaser. Except as set forth on Schedule 4.2(j), the County has no unfunded liabilities on account of or in connection with any such plan, agreement or arrangement.

(k) Schedule 4.2(k) attached hereto sets forth a complete and correct list, as of a date no earlier than 10 days from the Contract Date, of all deposits and patient trust funds (itemized by individual) held, maintained or administered by or on behalf of the Facility as of such date. To the best of the County's knowledge, any and all deposits and patient trust funds held, maintained or administered by or on behalf of the Facility have been, for the past three years, and presently are, held, maintained or administered in compliance with all applicable laws, rules and regulations.

(l) Employer Obligations. The County shall terminate the employment of all County employees of the Facility (the "County Employees") effective at 11:59 p.m. of the day prior to the Closing Date. The County has paid, or will have made provision for the payment of, all salaries, wages, and other compensation accrued through the date of termination of the County employees. The County has complied and will continue to comply, with all laws affecting the employment relationship between them and the County Employees, including but not limited to the Consolidated Omnibus Budget Reconciliation Act ("COBRA") and the WARN Act.

(m) Operation of Facility Prior to Closing. Subject to the provisions of Section 4.2(l) above, during the period commencing on the Contract Date through and including the Closing Date, the County shall continue to operate the Facility in a manner consistent with its historical operation. As of the Closing Date, there shall have been no Material Adverse Change.

(n) Purchaser's Right to Observe Business. Prior to the Closing Date, the Purchaser and its agents and employees may, from time to time, during normal business hours and at reasonable intervals, and upon no less than 24 hours' notice, enter the Facility and observe, in the company of the County's representatives, and in such manner as to create no interference or interruption of the ordinary course of care provided to residents, the business conducted therein in order that the Purchaser may become familiar with the Facility and its business; and the County agrees to permit the Purchaser, its agents and employees, the right to observe the operation of the Facility's business at such time. The foregoing shall, at all times, be subject to all patient rights of privacy, confidentiality, and privilege.

(o) Post-Closing Reconciliations. The Purchaser shall have the authority to use the County's Medicare and Medicaid provider numbers and shall permit the electronic payment of said claims into the County's bank accounts for services and goods provided by the Purchaser following Closing from Medicare, Medicaid, and other third party insurance sources. Such funds for services rendered after closing shall be the sole property of the Purchaser. The County shall provide to the Purchaser upon receipt of such funds copies of Explanation of

Benefits, Remittance Advice forms, and other documents that specify the amount of benefits being paid to the Facility. The County shall promptly remit such payments within two (2) business days of receipt to the Purchaser. The County shall file or cause to be filed a final Medicaid cost report to the Maryland Department of Health and Mental Hygiene and a final Medicare cost report to CMS within five (5) months of closing or upon the due date established by regulation, whichever is sooner.

(p) Memorandum of Understanding. The County covenants and agrees to enter into a memorandum of understanding for resident care services (the "MOU"), whereby the Purchaser agrees to continue providing assisted living services to subsidized residents, residing at MALF as of the Closing Date, for as long as they are medically appropriate for assisted living. As compensation for the MOU, the County shall pay the following fees to Purchaser:

Year 1: \$3.50 million (payable at closing);  
Year 2: \$3.25 million;  
Year 3: \$2.25 million; and  
Year 4: \$1.70 million.

(e)

(p)(q) Survival. The foregoing representations and warranties by the County are true and complete as of the Contract Date and shall be true and complete on the Closing Date.

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## ARTICLE V

### CASUALTY AND CONDEMNATION

Section 5.1 Casualty. If at any time prior to Closing any of the Facility Assets are destroyed or damaged as a result of fire or any other casualty ("Casualty"), the County shall give written notice ("Casualty Notice") thereof to the Purchaser. If the Facility Assets are the subject of a Casualty, and the cost to repair such Casualty exceeds ten percent (10%) of the Acquisition Price, as determined by a contractor selected by the County and reasonably acceptable to the Purchaser, the Purchaser shall have the right, as its sole option; (i) to terminate this Agreement (by written notice to the County within ten (10) days after the County's giving the Casualty Notice and estimate of repair from the County); or (ii) if the Purchaser does not terminate this Agreement (or if the Casualty is less than ten percent (10%) of the Purchase Price) the proceeds of any insurance with respect to the Facility Assets paid between the date of this Agreement and Closing and any deductible payable by the County (less amounts incurred by the County in performing necessary repairs to protect the Facility Assets) shall be paid to the Purchaser at the time of Closing, and all unpaid claims and rights in connection with losses to the Facility shall be assigned to the Purchaser at Closing without in any manner affecting the Purchase Price. Risk of loss shall pass to the Purchaser at Closing.

Section 5.2 Condemnation. If either: (i) all of the Facility Real Property; or (ii) a substantial portion of the Facility Real Property; is taken between the date of this Agreement and the date of Closing by the exercise of the power of eminent domain by any local, state, or federal body, the County shall notify the Purchaser ("Condemnation Notice"), and the Purchaser may choose, by written notice to the County given within ten (10) days after the County's giving the Condemnation Notice, to cancel this Agreement. In the event the Purchaser does not so cancel

this Agreement, the Purchaser shall complete Closing at the full Purchase Price, in which case the County shall allow a credit to the Purchaser at Closing equal to the amount of condemnation proceeds actually paid to the County prior to Closing and shall assign to the Purchaser all of the County's rights to any unpaid claims in connection with the eminent domain award or compensation. If there is a taking of less than a substantial portion of the Property, the parties shall be obligated to close, and at Closing, the County shall allow a credit to the Purchaser equal to the amount of condemnation proceeds actually paid to the County prior to Closing, and the County shall assign to the Purchaser all of the County's rights to any unpaid claims in connection with the eminent domain award or compensation.

## ARTICLE VI

### BREACHES AND DEFAULTS

Section 6.1 Breach of Obligations, Representations or Warranties by Purchaser. If at any time subsequent to the Contract Date and prior to the Closing Date, (a) the Purchaser shall breach any obligation, covenant or warranty made by it herein, or (b) any representation made by the Purchaser herein shall be (or prove to be) false in any material respect, then, upon the County's providing written notice thereof to the Purchaser, the Purchaser shall proceed with due diligence and dispatch to take all such actions as shall reasonably be required to cure such breach, and the Purchaser shall continue to take all such action until such breach is cured.

Section 6.2 Events of Default by Purchaser. Subject to the provisions of Section 6.1 hereof, any one or more of the following shall constitute an Event of Default by the Purchaser hereunder:

- (a) Failure by the Purchaser (within ~~ten~~ thirty (30) days of either the occurrence or notice of any event described in Section 6.1 above, whichever is later), to cure such breach; or
- (b) Any Act of Bankruptcy on the part of the Purchaser has occurred prior to satisfaction of the terms and conditions of this Agreement; or
- (c) In the event that the Purchaser shall fail to obtain the DHMH Approval contemplated in Section 2.12 of this Agreement; or
- (d) In the event that the Purchaser is unable to consummate the transactions contemplated in this Agreement because it is unable to pay the Acquisition Price to the County as provided herein.

Section 6.3 Remedies of the County. The remedies for the occurrence of an Event of Default set forth under Section 6.2 hereof shall be, at the option of the County, either (a) a suit seeking specific performance by the Purchaser of the provisions of this Agreement and injunctive relief or to terminate this Agreement, or (b) ~~to pursue any other remedies that may be available to the at law or in equity or (c) the release of the Deposit to the County as liquidated damages, if the Deposit has not otherwise been released under the terms of this Agreement.~~ The Purchaser and the County agree that, as of the Contract Date, the above-stipulated damage is a reasonable approximation of the damages the County will incur as a result of the termination of

this Agreement as a result of the Events of Default by the Purchaser specified hereinabove. All rights and remedies under this Agreement are cumulative of and not exclusive of, any rights or remedies otherwise available, and the exercise of any such rights or remedies shall not bar the exercise of any other rights or remedies.

**Section 6.4 Breach of Obligations Representations or Warranties by the County.** In the event that the County shall breach any material obligation herein, or any covenant or warranty made by it herein, or if at any time any representation made by the County herein shall be or prove to be false in any material respect then, upon the Purchaser's providing written notice thereof to the County, the County shall proceed with due diligence and dispatch to take all such actions as shall reasonably be required to cure such breach and the County shall continue to take all such actions until such breach is cured.

**Section 6.5 Events of Default by County.** Subject to the provisions of Section 6.4 hereof, failure by the County (within thirty (30) days of either the occurrence or notice of any event described in Section 6.4 above, whichever is later), to cure such breach shall constitute an Event of Default by the County; provided however, that if the County is diligently pursuing such cure, and if in the reasonable judgment of the Purchaser, there is a reasonable likelihood that such breach will be cured within such ~~ninety (90)~~<sup>thirty (30)</sup> day period, then failure to cure such breach shall not be considered to be an Event of Default until the ~~90th~~<sup>30th</sup> day after such breach has occurred or such notice has been provided, whichever is later.

**Section 6.6 Remedies of Purchaser for Event of Default by County.** The remedies for the occurrence of an Event of Default set forth under Section 6.5 hereof shall be the Purchaser may pursue a suit seeking specific performance by the County of the provisions of this Agreement. All rights and remedies under this Agreement are cumulative of and not exclusive of, any rights or remedies (otherwise available, and the exercise of any such rights or remedies shall not bar the exercise of any other rights or remedies.

**Section 6.7 Non-waiver.** No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient by the nonbreaching party in its sole discretion. No waiver of the occurrence of any Event of Default hereunder, whether by the Purchaser or the County, shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereto.

**Section 6.8 Pending Disputes.** Notwithstanding anything contained in this Agreement to the contrary, if there shall be a dispute concerning the right of a party to terminate this Agreement, the Parties shall continue to perform their respective obligations hereunder as if the Agreement were in effect until such dispute is resolved and any appeals permitted thereunder are exhausted.

**Section 6.9 Indemnification.**

(a) **Indemnification by Purchaser.** The Purchaser agrees to protect, indemnify, defend and hold the County, and its officers, members, employees, and agents,

successors and assigns, free and harmless from and against any and all claims, debts, liabilities, obligations, losses, fines, penalties, judgments, assessments, damages, costs and expenses (including but not limited to reasonable attorneys' fees and expenses), liens and encumbrances accruing, based upon, resulting from or directly or indirectly arising out of (i) any breach or violation of any representation, warranty, covenant, stipulation, agreement or certification by the Purchaser set forth in this Agreement or in any document delivered hereunder, provided such breach or violation has been determined to have occurred by a court of competent jurisdiction; or (ii) the breach by the Purchaser of any other term or provision of this Agreement, provided such breach or violation has been determined to have occurred by a court of competent jurisdiction; or (iii) any damages to the Facility Assets caused by the negligence, gross negligence or intentional acts of the Purchaser, its agents, employees, independent contractors, officers or directors, prior to Closing Date; or (iv) any facts or events occurring after the Closing Date and connected with the Facility Assets, the activities of the Purchaser or the operations of the Facility; provided, however, the indemnity shall not apply to any liability arising from a breach of this Agreement by the County, or other act or omission by the County occurring on or before the Closing Date.

(b) Indemnification by County. To the extent permitted by law, and subject to the limitations set forth in subsection (c) below, the County, agrees to protect, indemnify, defend, and hold the Purchaser and its members, officers, trustees, affiliates, agents, legal representatives, successor and assigns, and each of them, free and harmless from and against any and all claims, debts, liabilities, obligations, losses, damages, fines, penalties, judgments, assessments, damages, costs and expenses (including but not limited to reasonable attorneys' fees and expenses), liens and encumbrances accruing based upon, resulting from or directly or indirectly arising out of (i) any breach or violation of any representation, warranty, covenant, stipulation, agreement or certification by the County set forth in this Agreement or in any document delivered hereunder, provided such breach or violation has been determined to have occurred by a court of competent jurisdiction; or (ii) the breach by the County of any other term or provision of this Agreement, provided such breach has been determined to have occurred by a court of competent jurisdiction; or (iii) any facts or events occurring prior to the Closing Date and connected with the Facility Assets, the activities of the County or the operation of the Facility; or (iv) any Medicare or Medicaid claims concerning facts or events occurring prior to the Closing Date and connected with the operations of the Facility; or (v) any deficiencies in Patient Trust Funds relating to the operation of the Facility prior to the Closing Date; provided, however, that the indemnity shall not apply to any liability arising as a breach of this Agreement by the Purchaser, so long as such breach has been determined to have occurred by a court of competent jurisdiction, or other act or omission by the Purchaser occurring on or after the Closing Date; and provided further that with respect to claim made as described in (iv) of this Section 6.9(b), the Purchaser shall direct requests for indemnification to the County, attention County Attorney.

(c) County Payments Subject to Appropriation. All payment obligations of the County under this Agreement are subject to the legal availability of funds duly and properly appropriated for such purpose by the Board of County Commissioners of Frederick County. The County covenants and agrees to properly appropriate all such funds as are necessary and required to fully comply with this Agreement.

## **ARTICLE VII**

## MISCELLANEOUS

Section 7.1 Compliance with Applicable Laws. From and after the Closing Date, the Purchaser shall take all actions required to comply with all Applicable Laws relating to its utilization of the Facility Assets.

Section 7.2 Utilization of Facility as Facility or Similar Facility: Preference to County Residents. ~~{To be completed to reflect the terms of the Purchaser's proposal}~~ Purchaser shall utilize the Facility as a comprehensive care facility and an assisted living facility for a minimum of five (5) years following the Closing Date. Purchaser shall give preference to admission of Frederick County residents.

Section 7.3 Dispute Resolution. Notwithstanding anything herein to the contrary, the Parties may resolve any disputes which may arise among them through any available legal or equitable procedure. In addition, the Parties may, on a case-by-case basis, agree to submit any such dispute to a non-binding mediation procedure in order to create a factual record which will be available for use by a court of competent jurisdiction in any subsequent action relating to such dispute. Unless otherwise agreed to in writing or as provided below, the Parties shall continue to perform their respective obligations under this Agreement during any arbitration or other dispute resolution process.

Each party to this Agreement hereby irrevocably agrees that any legal action or proceeding arising out of or relating to this Agreement or any agreements or transactions contemplated hereby shall be brought exclusively in the Circuit Court of Frederick County, Maryland, and hereby expressly submits to the personal jurisdiction and venue of such court for the purposes thereof and expressly waives any claim of improper venue and any claim that such court is an inconvenient forum. Each party hereby irrevocably consents to the service of process of such court in any such suit, action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to the address set forth or referred to in Section 7.9, such service to become effective ten (10) days after such mailing.

Section 7.4 Further Assurances. Each party shall execute and deliver any instruments and perform any acts that may be necessary or reasonably requested in order to give full effect to the terms of this Agreement. Each party shall use all reasonable efforts to provide such information, execute such further instruments and documents and take such action as may be reasonably requested by the other Parties; provided however, that such actions are not inconsistent with the provisions of this Agreement and do not involve the assumption of obligations other than those which are provided for in this Agreement to carry out the intent of this Agreement.

Section 7.5 Relationship of the Parties. Except as otherwise explicitly provided herein, or by Applicable Laws, no party to this Agreement shall have any responsibility whatsoever with respect to services that are to be provided or contractual obligations that are to be assumed by any other party and nothing in this Agreement shall be deemed to constitute any party a partner, joint venture participant, agent or legal representative of any other party or to create any fiduciary relationship between or among the Parties.

Section 7.6 Waiver. The waiver by any party of a default or of a breach of any provision of this Agreement by the other Parties shall not operate or be construed to operate as a waiver of any subsequent default or breach. The making or the acceptance of a payment by any party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

Section 7.7 Modification. Modifications, waivers or amendments of (or to the provision of) this Agreement shall be effective only if set forth in a written instrument signed by each party hereto after all corporate or other action regarding the authorization for such modification, waivers or amendments has been taken.

Section 7.8 Headings. The captions and headings in this Agreement are for convenience and ease of reference only and in no way define, limit or describe the scope or intent of this Agreement and such headings do not in any way constitute a part of this Agreement.

Section 7.9 Notices. Any notice or other communication which is required to be given hereunder shall be in writing and shall be deemed to have been validly given if faxed to the telephone number set forth below, delivered in person or mailed by certified or registered mail, postage prepaid, addressed as follows:

If to the County:

County Commissioners of Frederick County  
Winchester Hall  
12 E. Church Street  
Frederick, Maryland 21702  
Attn: Lori Depies, County Manager

With Copy To

County Attorney  
Winchester Hall  
12 E. Church Street  
Frederick, Maryland 21702

If to the Purchaser:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Aurora Holdings VII, LLC  
8227 Cloverleaf Drive, Suite 309  
Millersville, Maryland 21108  
Attn: Stanley H. Snow  
Telephone No.: (410) 729-8406

With copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Gallagher, Evelius & Jones, LLP  
218 North Charles Street, Suite 400  
Baltimore, Maryland 21201  
Attn: Thomas B. Lewis  
Tel: (410) 347-1356  
Fax: (410) 468-2786  
Email: [tlewis@geljlaw.com](mailto:tlewis@geljlaw.com)

If notice is sent by fax or e-mail, the original executed copy of the notice shall be mailed or delivered as provided above. Changes in the addresses to which such notices may be directed may be revised from time to time by any party by written notice to the other Parties.

Section 7.10 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties.

Section 7.11 As Is No Representations or Warranties. Except as may otherwise be set forth in this Agreement, the Purchaser acknowledges and agrees that neither the County nor any agent or representatives of the County have made, and the County is not liable or responsible for or bound in any manner by any express or implied representations, warranties, covenants, agreements, obligations, guarantees, statements, information or inducements pertaining to the Condition of the Facility Assets or any part thereof. The Purchaser acknowledges, agrees, represents and warrants that it has had, and/or shall have had, the opportunity and has in fact, and/or shall have in fact, inspected the Facility Assets and all matters respecting the Facility Assets and is and/or shall be fully cognizant of the Condition of the Facility Assets and that it has had, and/or shall have had, access to information and data relating to all of same as the Purchaser has considered necessary, prudent, appropriate or desirable for the purposes of this transaction and that the Purchaser, and its agents and representatives have, and/or shall have had, independently inspected, examined, analyzed and appraised all of same. The Purchaser acknowledges that the Purchaser is and/or will be fully familiar with the Facility Assets and the Purchaser agrees to accept the Facility Assets "AS IS", with all faults, in its current condition, subject to reasonable wear and tear. The County shall maintain the Facility Assets in its current condition until Closing. The Other than as provided in Sections 2.7(a)(iv) and 2.12, the Purchaser shall be responsible at its sole cost and expense to obtain and satisfy all required governmental or regulatory inspection, certificate or other such transfer requirements prior to Closing. As used herein, "Condition of the Facility Assets" shall mean the title and physical condition thereof, including all environmental matters, the quantity, character, fitness and quality thereof, merchantability, fitness for particular purpose, the income, expenses or operation thereof, the value and profitability thereof, the uses which can be made thereof, title to the Facility Assets the structural and mechanical condition of the Facility Assets, the buildings, structures and improvements situate thereon, the plumbing, heating, electric and ventilating systems (if any) serving the Facility Assets and any other matter or thing whatsoever with respect thereto. In addition to, and without limiting the foregoing, the Purchaser further acknowledges and agrees that the Facility Assets are conveyed in their "as is" condition with respect to environmental



matters, and the Purchaser hereby assumes the risk that adverse past, present or future conditions may not be revealed in its inspection or investigation.

Section 7.12 Severability. In the event that any provision of this Agreement shall be determined for any reason to be invalid, illegal or unenforceable in any respect by any court of competent jurisdiction, the Parties shall negotiate in good faith and agree to such amendments, modifications or supplements of or to this Agreement or to such other appropriate actions as, to the maximum extent practicable in light of such determination, shall implement and give effect to the intentions of the Parties as reflected herein. Notwithstanding such determination, such determination shall not invalidate or render any other provision hereof unenforceable.

Section 7.13 Governing Law. The obligations of the County and the Purchaser under the terms of this Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Maryland.

Section 7.14 Liability of Officers and Employees. Except to the extent provided by Applicable Laws, no officer, official, commissioner, trustee, agent, representative or employee of any Party or affiliates of the Purchaser shall be charged personally by the other party or held contractually liable there to under any term or provision of this Agreement, because of any Party's execution or attempted execution or because of any breach or alleged breach thereof; provided however, that all persons and Parties remain solely responsible for any of their own criminal or fraudulent actions.

Section 7.15 Third Party Beneficiaries. It is not intended that this Agreement make any Person or entity a third party beneficiary hereof, notwithstanding the fact that Persons or entities other than the Purchaser and the County may be benefited thereby.

Section 7.16 Merger Clause. This Agreement (including the Schedules hereto) constitutes the entire agreement and understanding of the Parties with respect to the conveyance of the Facility Assets and all other matters addressed or referred to herein and supersedes all prior and contemporaneous agreements and understandings, representations and warranties, whether oral or written, relating to such matter.

Section 7.17 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if the signature and seals thereto and hereto were upon the same instrument.

Section 7.18 Survival. All representations, warranties, covenants, stipulations, certificates, indemnities, and agreements contained herein or in any document delivered pursuant hereto shall survive the consummation of the transactions provided for in this Agreement or two (2) years..

Section 7.19 Public Announcements. During the period commencing on the Contract Date through and including the Closing Date, no party shall make any public announcement concerning this Agreement or the transactions contemplated herein other than as may be required by the Open Public Meetings Act or Open Public Records Act, without the prior consent of the other Parties, which consent shall not be unreasonably withheld or delayed.

IN WITNESS WHEREOF, the County, and the Purchaser have executed this Agreement, intending to be legally bound hereby as of the day and year first above written.

THE COUNTY:

ATTEST:

COUNTY COMMISSIONERS OF FREDERIK  
COUNTY, MARYLAND

\_\_\_\_\_  
Lori Depies  
County Manager

By: \_\_\_\_\_

Blaine R. Young  
President

PURCHASER:

ATTEST:  
HOLDINGS VII, LLC

~~[NAME OF CORPORATION]~~ AURORA

By: \_\_\_\_\_

Print Name: \_\_\_\_\_  
Stanley H. Snow  
Title: \_\_\_\_\_  
President

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

WITNESS:

SCHEDULES

DRAFT

